

Application No. 09/916611
Reply to Office Action of December 6, 2005

Docket No.: 00306-00142-USU

REMARKS

Applicant respectfully requests reconsideration in view of the amendment and following remarks. The applicants have corrected the single versus plural use of the terms in claims 82-91. The applicant has substantially rewritten claims 64 and 82 in the independent form as newly added claims 96 and 97. In claim 97 the applicant deleted mineral oil from claim 82 but has included aromatic mineral oil. The applicant authorizes the PTO to charge the extra fee required for these two claims (two independent claims over three (\$400.00) and two additional claims over twenty (\$100.00).

The applicant appreciates that Examiner Pryor permitted the applicant to interview this application on January 18, 2006. The applicant discussed the prior art and the claims. The applicant informed the Examiner that claim 19 was cancelled but inadvertently reinstated in one of the earlier amendments. The applicant has cancelled claim 19.

The Examiner inadvertently stated that some dependent claims were allowable because of the features claimed in the dependent claims. In addition, the applicant pointed out that the Examiner should have maintained the rejection of claim 72 because claim 72 included 2,4-D. The applicant has decided not to cancel 2,4-D from claim 72, because the applicant believes that claim 1 is allowable and claim 72 would be allowable because claim 72 ultimately depends from claim 1.

In the interview, the applicant pointed out that the Examiner should have maintain the rejection over claims 82-85 because these claims included mineral oil which could include kerosene. The applicant discussed canceling mineral oil from claims 82-85 but believes that it not necessary because of the enclosed declaration from Johnnie Roberts establishes unexpected results. It is noted that the applicant has added a new claim 97 which is substantially claim 82

rewritten in the independent form using "comprising language" and including an aromatic mineral oil. Kerosene is not an aromatic mineral oil.

The applicant also discussed that the previous declarations did not address whether the chlorinated carboxylic acid herbicide is fully dissolved in the surfactant.

Claims 1, 3-18, 20-28, 30-39, 41-48, 50-56, 68, 69, 71, 72, and 86-91 are rejected under 35 USC 103 as being obvious over AF 300 from Nufarm MSDS. The applicant respectfully traverses this rejection.

The applicant's claimed invention requires that said chlorinated carboxylic acid herbicide is fully dissolved in the surfactant (see independent claims 1, 93, 94, 96 and 97). Enclosed is a declaration from Johnnie Roberts which he indicated that 2,4-D did not dissolve in the surfactant used in the prior art of AF-300 as is required by the applicant's claimed invention. The period was for approximately 66 hours. AF 300 does not disclose nor suggest the claimed feature that said chlorinated carboxylic acid herbicide is fully dissolved in the surfactant. For this reason alone the applicant's claimed invention is not obvious over AF 300 and this rejection should be withdrawn.

It is pointed out that the applicant did not compare in the previous declaration whether the chlorinated carboxylic acid herbicide is fully dissolved in the surfactant. The applicant also had kerosene (which is not a surfactant) added to formulation. Therefore, the declaration did not establish whether the said chlorinated carboxylic acid herbicide is fully dissolved in the surfactant.

The Examiner raised the issue that the applicant was able to dissolve the herbicide in the surfactant and kerosene at a temperature of 70C. The Examiner correctly asserted that the

applicant's claims do not require a specific temperature. However, in the real world of herbicide applications, the 70°C temperature the applicant used was for dissolving the herbicide would never have been used.

Also attached in Appendix 1 is the Federal Government's test guidelines that have been developed by the Office of Prevention, Pesticides and Toxic Substances, United States Environmental Protection Agency for use in the testing of pesticides and toxic substances, and the development of test data that must be submitted to the Agency for review under Federal regulations. The U.S. government indicated that the testing is at room temperature from 20 to 25°C.

This is also confirmed in IUPAC definitions found in
<http://www.cas.org/ONLINE/UG/propdefinitions.pdf>

The Examiner will note under the heading molecular solubility the definition is "number of moles of a compound that dissolve in pure water at 25 degrees C to produce a liter of saturated solution (see Appendix 2)

This is further confirmed in Compilation of ASTM Standard Definitions 6th ed. 1986. The Examiner will note the definition of liquid at the bottom of page 447 (a substance that has a definite volume but no definite form, except such given by its container. It has a viscosity of ... at 104°F (40°C)) (see Appendix 3). Therefore if the temperature is greater than 40°C, the substance would not be a liquid.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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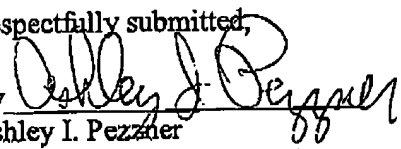
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Applicant believes no additional fee is due with this response other than for the extra claims. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 00306-00142-USU from which the undersigned is authorized to draw.

Respectfully submitted,

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Enclosure:

Appendix 1 - United States Environmental Protection Agency Prevention, Pesticides and Toxic Substances EPA 712-C-96-020 (7101) August 1996

Appendix 2 - IUPAC definitions found in <http://www.cas.org/ONLINE/UG/propdefinitions.pdf>

Appendix 3 - Compilation of ASTM Standard Definitions 6th ed. 1986

Declaration from Johnnie Roberts